

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KELVIN JUNIOR NOLEN,

Petitioner,

Case No. 1:19-cv-698

v.

Hon. Hala Y. Jarbou

GREGORY SKIPPER,

Respondent.

ORDER TO STAY

This is a habeas corpus action filed by a state prisoner under 28 U.S.C. § 2254. The Court ordered Respondent to file an answer (ECF No. 10). On May 6, 2020, Respondent filed an answer (ECF No. 12), together with the relevant materials required under Rule 5 of the Rules Governing § 2254 Cases (ECF No. 13).

On August 13, 2021, Respondent filed a motion to stay these proceedings and hold them in abeyance. Respondent reports that Petitioner has consented to the stay. Respondent indicates that, in February 2021, the Michigan Innocence Clinic¹ filed a motion for relief from judgment in the Wayne County Circuit Court on Petitioner's behalf. (Mot., ECF No. 16, PageID.1494), *see also* <https://cmspublic.3rdcc.org/CaseDetail.aspx?CaseID=2487578> (visited August 17, 2021). The criminal conviction is presently under review by the Wayne County Prosecutor's Office Conviction Integrity Unit (Wayne CIU). (Mot., ECF No. 16, PageID.1494.) The Wayne County motion for relief from judgment is stayed pending that review,

¹ The Michigan Innocence Clinic is a nonprofit legal aid program that is supported by the University of Michigan and the University of Michigan Law School. *See* <https://michigan.law.umich.edu/academics/experiential-learning/clinics/michigan-innocence-clinic-0> (visited August 17, 2021).

<https://cmspublic.3rdcc.org/CaseDetail.aspx?CaseID=2487578> (visited August 17, 2021), and the parties have agreed to stay these proceedings as well.

It appears that Petitioner's motion for relief from judgment presents issues not already part of Petitioner's habeas petition. Respondent notes that the proceedings in state court, particularly the review by the Wayne CIU, might render this habeas petition moot. "Principles of comity require that [the federal court] not seek to upset a state court conviction on the basis of an alleged constitutional violation that the state court never had an opportunity to correct." *Allen v. Mitchell*, 953 F.3d 858, 866 (6th Cir. 2020). Federal-state comity and judicial efficiency, therefore, support granting the stay.

IT IS ORDERED that Petitioner's habeas action is hereby stayed until Petitioner files a motion to amend his petition to include the issues raised in his state-court motion for relief from judgment. Such motion must be filed not later than 30 days after a final decision by the Michigan Supreme Court on Petitioner's "motion for relief from judgment" claims and shall include a description of any newly exhausted claims and the dates and substance of decision at each step of state-court review.

IT IS FURTHER ORDERED that if Petitioner fails to comply with the deadlines imposed in this order, the Court may dismiss the petition.

IT IS FURTHER ORDERED that Petitioner shall advise the Court of any change of address occurring during the pendency of the stay.

IT IS FURTHER ORDERED that this case shall be administratively closed until such time as Petitioner files a motion to amend his petition in accordance with the procedures set forth in this order.

Dated: August 18, 2021

/s/ Hala Y. Jarbou

HALA Y. JARBOU

UNITED STATES DISTRICT JUDGE